

RANDY RICH, as personal  
representative of RYAN RICH,  
deceased, and NICK JENSEN and  
TANYA JENSEN as guardians for  
R.J., a minor,  
  
Plaintiffs,  
  
vs.  
  
TASER INTERNATIONAL, INC., and  
DOES 1 to 10, inclusive,  
  
Defendants.

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On January 4, 2008, decedent Dr. Ryan Rich ("Dr. Rich"), who had a history of seizure disorders, was driving on Interstate-15 in Las Vegas, Nevada when he had a seizure which resulted in several minor traffic collisions, witnessed by Nevada Highway Patrol Officer Loren Lazoff ("Officer Lazoff"). (Compl. ¶¶ 11-13.) After the accident,

1 Officer Lazoff approached the vehicle and a struggle ensued, as Dr.  
2 Lazoff was in a dazed post-seizure state. (Id. ¶¶ 13-15.) When Dr.  
3 Rich eluded Officer Lazoff's grasp and began heading toward oncoming  
4 traffic, Officer Lazoff found it necessary to discharge his TASER  
5 Model X26 Electronic Control Device (the "ECD") three times into Dr.  
6 Rich's chest from a distance of about three to four feet, and then two  
7 additional times to Dr. Rich's right thigh before he was able to  
8 handcuff Dr. Rich with the help of a passerby. (Id. ¶¶ 16-18.) When  
9 Officer Lazoff returned to his patrol vehicle to call an ambulance,  
10 the passerby informed him the Dr. Rich was turning blue. (Id. ¶ 20.)  
11 Paramedics transported Dr. Rich to Spring Valley Hospital where he was  
12 pronounced dead. (Id. ¶ 21.)

13 At the time of his death, Dr. Rich was a divorced father to  
14 Plaintiff R.J., a minor. (Pls.' Mem. P. & A. at 2 (#120); Def.'s Mem.  
15 P. & A. at 2 (#121).) Approximately seven months after Dr. Rich's  
16 death, and prior Plaintiffs bringing suit, Plaintiff R.J. was adopted  
17 by her mother's new husband, her custodial step-father. (Pls.' Mem.  
18 P. & A. at 2 (#120); Def.'s Mem. P. & A. at 2 (#121).)

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## **II. Procedural Background**

21 Plaintiffs filed the Complaint (#1) on December 30, 2009,  
22 alleging the following five causes of action: (1) Negligence; (2)  
23 Strict Product Liability; (3) Intentional Misrepresentation; (4)  
24 Fraudulent Concealment and Deceit; and (5) Negligent  
25 Misrepresentation. TASER filed its answer (#13) on April 26, 2010.

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1 On March 30, 2012, we issued an Order (#119) granting TASER's  
2 Motions in Limine (## 50, 51) to exclude the testimony of Drs. Jerome  
3 Engel and Michael Wogalter, respectively, and denying TASER's Motion  
4 in Limine (#52) to exclude the testimony of Dr. Douglas Zipes.  
5 Further, we granted TASER's Motion for Summary Judgment (#53) with  
6 regard to Plaintiffs' third, fourth, and fifth causes of action, and  
7 denied the motion as to Plaintiffs' first and second causes of action  
8 for negligence and strict product liability. We further granted  
9 TASER's Motion to Strike (#109) and struck Dr. Zipes' supplemental  
10 report (#108-1) from the record.

11 We further ordered the parties to brief the issue, raised in  
12 TASER's Motion for Summary Judgment (#53), whether the adoption of  
13 Plaintiff R.J., a minor, by her stepfather precludes her from bringing  
14 a wrongful death action with regard to her natural father, Dr. Rich.  
15 Plaintiffs and Defendant submitted their respective Memoranda of  
16 Points and Authorities (## 121, 122) on April 20, 2012. On May 4,  
17 2012, Plaintiffs and Defendant filed their respective Responses (##  
18 122, 123). There were no replies.

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### **III. Legal Standard**

21 Summary judgment allows courts to avoid unnecessary trials where  
22 no material factual dispute exists. Nw. Motorcycle Ass'n v. U.S.  
23 Dep't of Agric., 18 F.3d 1468, 1471 (9th Cir. 1994). The court must  
24 view the evidence and the inferences arising therefrom in the light  
25 most favorable to the nonmoving party, Bagdadi v. Nazar, 84 F.3d 1194,  
26 1197 (9th Cir. 1996), and should award summary judgment where no

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1 genuine issues of material fact remain in dispute and the moving party  
2 is entitled to judgment as a matter of law. FED. R. CIV. P. 56(c).  
3 Judgment as a matter of law is appropriate where there is no legally  
4 sufficient evidentiary basis for a reasonable jury to find for the  
5 nonmoving party. FED. R. CIV. P. 50(a). Where reasonable minds could  
6 differ on the material facts at issue, however, summary judgment  
7 should not be granted. Warren v. City of Carlsbad, 58 F.3d 439, 441  
8 (9th Cir. 1995), cert. denied, 516 U.S. 1171 (1996).

9       The moving party bears the burden of informing the court of the  
10 basis for its motion, together with evidence demonstrating the absence  
11 of any genuine issue of material fact. Celotex Corp. v. Catrett, 477  
12 U.S. 317, 323 (1986). Once the moving party has met its burden, the  
13 party opposing the motion may not rest upon mere allegations or  
14 denials in the pleadings, but must set forth specific facts showing  
15 that there exists a genuine issue for trial. Anderson v. Liberty  
16 Lobby, Inc., 477 U.S. 242, 248 (1986). Although the parties may  
17 submit evidence in an inadmissible form--namely, depositions,  
18 admissions, interrogatory answers, and affidavits--only evidence which  
19 might be admissible at trial may be considered by a trial court in  
20 ruling on a motion for summary judgment. FED. R. CIV. P. 56(c); Beyene  
21 v. Coleman Sec. Servs., Inc., 854 F.2d 1179, 1181 (9th Cir. 1988).

22       In deciding whether to grant summary judgment, a court must take  
23 three necessary steps: (1) it must determine whether a fact is  
24 material; (2) it must determine whether there exists a genuine issue  
25 for the trier of fact, as determined by the documents submitted to the  
26 court; and (3) it must consider that evidence in light of the  
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1 appropriate standard of proof. Anderson, 477 U.S. at 248. Summary  
2 judgment is not proper if material factual issues exist for trial.  
3 B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir.  
4 1999). As to materiality, only disputes over facts that might affect  
5 the outcome of the suit under the governing law will properly preclude  
6 the entry of summary judgment. Disputes over irrelevant or  
7 unnecessary facts should not be considered. Id. Where there is a  
8 complete failure of proof on an essential element of the nonmoving  
9 party's case, all other facts become immaterial, and the moving party  
10 is entitled to judgment as a matter of law. Celotex, 477 U.S. at 323.  
11 Summary judgment is not a disfavored procedural shortcut, but rather  
12 an integral part of the federal rules as a whole. Id.

#### 14 IV. Discussion

15 Defendant TASER challenges Plaintiff R.J.'s standing to pursue  
16 a wrongful death claim pursuant to Nevada law. TASER argues that  
17 Nevada Revised Statute ("NRS") § 127.160 unambiguously precludes  
18 Plaintiff R.J. from bringing a wrongful death action for the alleged  
19 wrongful death of her natural father because her right to bring suit  
20 terminated upon her subsequent adoption by her custodial stepfather.

21 NRS § 127.160 provides as follows:

22 After a decree of adoption is entered, the natural parents  
23 of an adopted child shall be relieved of all parental  
24 responsibilities for such child, and they shall not  
25 exercise or have any rights over such adopted child or the  
26 property of such adopted child. The child shall not owe  
27 his or her natural parents or their relatives any legal  
28 duty nor shall the child inherit from his or her natural  
parents or kindred.

1 However, whether NRS § 127.160 cuts off a minor child's right to  
2 inherit from her deceased natural parent upon her subsequent  
3 adoption is beside the point.<sup>1</sup> Rather, the proper question is  
4 whether Plaintiff R.J. may recover under Nevada's wrongful death  
5 statute as an heir of decedent. On this point, Nevada's wrongful  
6 death statute provides in pertinent part: "When the death of any  
7 person . . . is caused by the wrongful act or neglect of another,  
8 the heirs of the decedent and the personal representatives of the  
9 decedent may each maintain an action for damages against the person  
10 who caused the death, . . ." NEV. REV. STAT. § 41.085(2).  
11 Therefore, any heir of a decedent has standing to bring a wrongful  
12 death action, and we may therefore focus on inquiry on the

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14       <sup>1</sup> Even if this were the question before the Court, Defendants  
15 cannot identify a single case that supports their proposition that a  
16 minor child loses standing to bring a wrongful death action when his  
17 or her natural parent dies *before* his or her adoption - all of the  
18 cases relied upon by Defendants involve circumstances where the  
19 natural parent died *after* the minor child's adoption. See, e.g.,  
20 Buchea v. United States, 154 F.3d 1114, 1116 (9th Cir. 1998) (holding  
21 that minor's adoption nine months prior to biological parent's death  
22 severed her right to bring a claim as a "child" under Alaska's  
23 Wrongful Death Act); Webb v. Harvell, 563 F. Supp. 172, 174-75 (W.D.  
24 Ark. 1983) (holding that minor child adopted years before biological  
25 parent's death was not decedent's "child" under Arkansas wrongful  
26 death statute at the time of his death); Edonna v. Heckman, 253 P.2d  
27 627, 628 (Ariz. Ct. App. 2011) (holding that minor lacked standing to  
bring wrongful death action to recover for death of biological father  
where minor had been adopted fifteen years prior); Phraner v. Cote  
Mart, Inc., 63 Cal.Rptr.2d 740, 742 (Cal. Ct. App. 1997) (holding that  
minor's adoption, at birth, prior to her biological parent's death  
severed minor's right to bring a claim as a "child" under California's  
wrongful death statute); Go Int'l Inc. v. Lewis, 601 S.W.2d 495, 499  
(Tex. Civ. App. 1980) (natural children adopted fourteen years prior  
to their biological parents' deaths were not "children" under Texas'  
wrongful death statute). These cases therefore do not speak to the  
issue at hand of whether a minor child who is adopted *after* his or her  
biological parent's death has standing to bring a wrongful death suit.

1 definition of "heir:" "As used in this section, 'heir' means a  
2 person who, under the laws of this State, would be entitled to  
3 succeed to the separate property of the decedent if the decedent had  
4 died intestate." NEV. REV. STAT. § 41.085(1).

5 It is undisputable that Plaintiff R.J. was Dr. Rich's heir at  
6 the time of his death and was entitled to succeed to Dr. Rich's  
7 property if he had died intestate. Defendants ask us to rule, on a  
8 matter of first impression in Nevada, that Plaintiff's adoption  
9 divested her of her right to recover damages for the wrongful death  
10 of her natural parent. We decline to do so. We predict that the  
11 Nevada Supreme Court would hold that Plaintiff R.J.'s right to bring  
12 a wrongful death suit is akin to a property right, and that it  
13 vested in her at the time of Dr. Rich's death. Consequently, her  
14 subsequent adoption did not deprive Plaintiff R.J. of her property  
15 right that had already accrued, just as Plaintiff R.J. is not now  
16 required to return to Dr. Rich's estate any property she inherited  
17 upon his death due to her subsequent adoption. We agree with the  
18 Court in Alberino v. Long Island Jewish-Hillside Medical Center,  
19 which when faced with the same situation, held that

20 where, as here, the decedent's infant child is adopted  
21 after the decedent's death, his vested property right in  
22 the benefits of a cause of action for his natural parent's  
23 wrongful death will not be affected by the termination of  
24 his rights of inheritance and succession from and through  
his natural parents upon the making of an order of  
adoption. . . . The termination of these rights at the  
time of the adoption cannot operate to deprive the infant  
of a property right already accrued and vested.

25 450 N.Y.S.2d 857, 857 (N.Y. App. Div. 1982). Many other federal and  
26 state courts facing the same situation have also held that a child's

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1 subsequent adoption does not terminate his or her right to bring a  
2 wrongful death suit. See, e.g., Sanchez v. City of Chubbuck, No. CV  
3 08-551-REB, 2010 WL 742715, at \*5 (D. Idaho Feb. 24, 2010) ("While  
4 the Court acknowledges that [Idaho's adoption statute] could  
5 possibly be read to endorse Defendants' position, it is more  
6 sensible in the Court's view with public policy and equity, and the  
7 Legislature's presumed intent gleaned from a review of the statutes  
8 in their entirety, that this action only forecloses an heir's  
9 wrongful death claim if that heir was adopted before the decedent  
10 died - a situation not present here."); Pillsbury v. Title Ins. &  
11 Trust Co., 166 P. 11, 14 (Cal. 1917) ("Unquestionably, since [the  
12 adoption] followed the death of their father, it did not affect  
13 their status as his heirs. Whatever rights as heirs had descended  
14 to them upon the death of their ancestor they still retained.");  
15 Emory Univ. v. Dorsey, 429 S.E.2d 307, 308 (Ga. Ct. App. 1993) ("An  
16 adoption which occurs subsequent to the death of a natural parent  
17 should not terminate a cause of action for the wrongful death of the  
18 parent. . . . Consequently, we hold that to the extent that Jordan  
19 is otherwise entitled to recover under the wrongful death statute,  
20 his adoption after his mother's death does not bar that recovery.");  
21 Corley v. State, Dep't of Health & Hosps., 749 So.2d 926, 941-42  
22 (La. Ct. App. 1999) (holding that decedent's child was entitled to  
23 recover for father's wrongful death even though he had been legally  
24 adopted by his mother's new husband at the time of trial because "a  
25 cause of action for the recovery of wrongful death damages vests in  
26 favor of the surviving spouse and child on the date of the death of  
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1 the spouse or parent. The only relevant time for the determination  
2 of the relationship between potential claimants and the decedent is  
3 the date of death."); In re Estate of Mittendorf, 600 N.Y.2d 122,  
4 122 (N.Y. App. Div. 1993) ("Where a decedent's infant child is  
5 adopted after the decedent's death, his or her vested property right  
6 in the benefits of a cause of action for a natural parent's wrongful  
7 death will not be affected by the termination of his or her rights  
8 of inheritance and succession from and through the natural parents  
9 upon the making of an order of adoption.") (citation omitted). To  
10 hold otherwise would not foster the public policy of encouraging  
11 adoptions, and would force a minor child to choose between pursuing  
12 a wrongful death suit and being adopted by her step-parent.  
13 Consequently, we hold that Plaintiff R.J. is entitled to bring suit  
14 and to and recover under Nevada's wrongful death statute.

#### 15 16 V. Conclusion

17 In a matter of first impression under Nevada law, we decline to  
18 hold that Plaintiff R.J.'s standing to bring a wrongful death suit  
19 with regard to her natural father terminated upon her adoption,  
20 after his death, by her step-father. Plaintiff's right to bring a  
21 wrongful death suit vested at the time of her natural father's  
22 death. We agree with a long line of courts that have held  
23 similarly.

DATED: September 26, 2012.

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